

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
100 USDA, Suite 102
Stillwater, Oklahoma 74074-2654

OK Notice FLP-453

For: County Offices and Farm Loan Programs Teams

1951-A

Quarterly Reporting of Statute of Limitations

Approved by: State Executive Director



1 OVERVIEW

A

Background

This notice replaces OK Notice FLP-362, Quarterly Reporting of Statute of Limitations, which expired September 1, 2003.

National Notice FLP-264 directs the continued establishment monitoring of delinquent cases where the statute of limitations may bar collection on the account within the next 24 months. Farm Loan Programs Teams were instructed to maintain a running list of these cases and provide a report to the DD and the Farm Loan Chief.

B

Purpose

The purpose of this notice is to:

- Revise the established monitoring system to identify cases where the statute of limitations may bar collection on an account within the next 24 months.
- Ensure that offices are aware of the importance of resolving these cases before the statute of limitations may bar collection action.
- Provide conformity in reporting the statute of limitations cases.

Continued on the next page

Disposal

September 30, 2004

12-29-03

Distribution

Farm Loan Programs Teams, County Offices,
DDs, CORs

2 ISSUES

A

Statute of Limitations for Collection of Debt (Continued)

The primary statute, 28 USC 2415, Time for Commencing Action, provides in part, that action brought by the United States based upon a contract which must be filed within six years subsequent to the accrual of the right of the action.

In other words, a lawsuit seeking a judgment against an agency debtor must generally be filed within six years after acceleration or final maturity of the account (if not accelerated). If, after acceleration or maturity, the debtor makes a partial voluntary payment or makes written acknowledgment of the debt, the six-year time period starts running again.

If six years have passed from the date the account was accelerated or the note matured, and the borrower did not make any written acknowledgment of the debt or make any voluntary payments, the agency would still be able to collect the debt from the liquidation of security under a properly perfected security interest. However, the agency could potentially be barred from seeking a personal judgment for any deficiency. In cases where the borrower has repayment ability or other assets, we must take proper steps to insure that a lawsuit is filed within the proper timeframe.

B

Statute of Limitations for Administrative Offset

The Federal Claims Collection Act, as amended, and the regulations permit administrative offset for up to ten years after the right to collect the debt first occurred. This is four years beyond the six-year statute of limitations period. The Agency generally considers the date of acceleration or final maturity as the date the statute of limitations starts accruing. If the borrower makes a voluntary partial payment or written acknowledgment of the debt, the statute of limitations starts accruing again. Therefore, we may continue to collect payments from administrative offset up to ten years from the date of acceleration, voluntary partial payment, or written acknowledgment of the debt, whichever occurs later. After the ten-year period has run, offices must cancel the offset. However, offices are still required to settle the remaining debt owed in accordance with the authorities outlined under FmHA Instruction 1956-B.

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2 ISSUES

Continued

B

Statute of Limitations for Administrative Offset (Continued)

Prior to initiating an administrative offset after the six year statute of limitations has expired, the Agency must obtain the concurrence of the Office of General Counsel as required by FmHA Instruction 1951-C, paragraph 1951.103(g). These cases must be routed through the State Office.

C

Statute of Limitations for Judgment Debt

Under the Federal Debt Collection Procedures Act, which became effective May 29, 1991, an Abstract of Judgment is effective for a period of 20 years and may be renewed for one additional period of 20 years by filing a Notice of Renewal. When FSA initiates foreclosure and the property is sold and there is a deficiency, the file should be reviewed to determine if the borrower has any non-exempt, unencumbered assets from which a judgment might be collected. If assets are available, the file should be referred with a request for legal action to obtain a judgment.

D

Suspension of Statute of Limitations

In certain situations, the time period remaining under the statute of limitations may be suspended because of certain other actions that may have prohibited the Agency from enforcing collection of the debt, such as bankruptcy or court ordered injunctions.

3 Action

A

Farm Loan Programs Teams

The Farm Loan Programs Teams must review all CNC files, files of accounts flagged ACL/FAP, and files for any account shown to be three or more payments past due to determine the date for the running of the statute of limitations. The statute of limitations issue is not absolute and there are many gray areas. We need to be most concerned about those cases in which there is or will be a deficiency after liquidation of the collateral, and the borrower has other assets or income from which to collect. If the statute of limitations has expired, the Agency would be unable to obtain a personal judgment, garnish wages, or initiate Administrative Offset. If you have a situation that is not addressed and you have a concern, please provide a written outline of the case in order that an OGC opinion can be obtained.

3 Action

Continued

A

Farm Loan

Programs Teams

(Continued)

If the borrower raises a statute of limitation issue, it will be referred to OGC for a final determination.

When a judgment is obtained, the State Office is to process Form FmHA 1962-20, Notice of Judgment. Judgment accounts are not reflected on the 540 Report.

Each Farm Loan Program Team shall:

- Maintain a list of all accounts where the statute of limitations timeframes have begun. This list will be maintained on the attached Exhibit A. Also, maintain a list of all judgment accounts on the attached Exhibit B.
- **Quarterly, send updated Exhibits A and B to the District Director; State Executive Director, ATTN: Farm Loan Chief and; the District Farm Loan Specialist, by the fifth working day following the last day of each quarter. A copy of the report should be maintained in the operational filing in each county office where county files are located.**

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3 Action

Continued

A

Farm Loan Programs Teams (Continued)

When a borrower has more than one loan, regular payments from the crop year will be distributed in accordance with the following priorities:

1. First, to an amount equal to any advance made by FSA for the annual operating and family living expense.
2. Second, to FSA loan installments to pay them current.
3. Third, to FSA loans in proportion to delinquencies. Some amount should be applied on every note each year. This will keep the statute of limitations from running on one of the notes.

Please refer to FmHA Instruction 1951-A, 1951.9(a)(1) for reference on application of payments.

4 Contact

If there are questions regarding this notice, contact the Farm Loan Programs Section, or the Legal Servicing Specialist assigned to your area.

5 Filing Instructions

Where FmHA Instructions are available, a copy of this notice shall be filed preceding FmHA Instruction 1951-A and a copy should be filed in chronological order with FLP series Notices.

Exhibit A

County(ies): _____
Date Submitted: _____

Monitoring of Limitations for Accelerated, Matured and Currently Not Collectible Accounts

[illegible]

- 1 Six years from date of acceleration or final maturity of note.
- 2 Ten years from date of acceleration or final maturity of note.
- 3 Input SR for Security Remaining, or OA for Other Assets which collection may be made.
- 4 Input FAP when case is referred for foreclosure. Input CNC when case is referred for CNC Collection.

Exhibit B

Monitoring of Statute of Limitations for Judgment Accounts

[illegible]

*** Does borrower have assets or income from which the judgment can be collected?**
12-29-03